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**VIA ELECTRONIC FILING**

September 18, 2019

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: ***Ex Parte*, The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, WC Docket Nos. 18-143, 10-90 and 14-58**

Dear Ms. Dortch:

On September 16, 2019, Puerto Rico Telephone Company, Inc. ("PRTC") met with Michael Carowitz of Chairman Ajit Pai's Office and Daniel Kahn, Alexander Minard and Rebekah Douglas of the Wireline Competition Bureau ("Bureau") regarding the Commission's September 5, 2019 draft order in the above-referenced proceedings. The participants on behalf of PRTC were Francisco Silva, PRTC's General Counsel (by telephone), David Blessing, consultant to PRTC, and the undersigned of Wiley Rein LLP. At the meeting, the parties discussed PRTC's recommendations and proposals contained in the enclosed document.

Please contact the undersigned with any questions.

Respectfully submitted,

*/s/ Edgar Class*

Edgar Class
*Counsel for Puerto Rico Telephone Company, Inc.*

cc: Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Jeffrey Starks
Nicholas Degani
Michael Carowitz
Preston Wise
Arielle Roth
Joseph Calascone
Travis Litman
Randy Clarke

Kris Monteith
Daniel Kahn
Ryan Palmer
Alexander Minard
Rebekah Douglas

**Ex Parte**
**Uniendo a Puerto Rico Fund Draft Order**
**Puerto Rico Telephone Company, Inc.**
**September 16, 2019**

(1) **One-Year Location Adjustment Process** (Draft Order, ¶¶ 62-64)

Proposal: As part of the one-year location adjustment process, the Commission should not apply a *pro rata* reduction in support unless the actual number of locations is less than 90% of the estimated total.

Explanation: In the Draft Order, the Commission will require each winning participant to deploy by the specified deadline to all locations within the municipio(s) for which it is the winning applicant.[1] The Commission will use the latest Census Bureau data to estimate the number of locations in the municipio to which the winning proposal must make broadband available.[2] Fixed support recipients will have one-year to bring to the Commission's attention discrepancies between the number of locations announced by the Wireline Competition Bureau ("Bureau") and the number of locations actually on the ground within their winning municipios.[3] The Draft Order states that "if a support recipient can sufficiently demonstrate that it is unable to identify actual locations totaling the number determined by Census Bureau data, its obligation will be reduced to the total number of locations it was able to identify in the area and its support will also be reduced on a pro rata basis."[4]

Because of the uncertainty about the accuracy of the adjusted location estimates, any difference between the estimate and the actual number should not lead to a *pro rata* reduction in support unless the difference exceeds a certain threshold.

The accuracy of the location counts has been a contentious issue in the application of both the CAM and ACAM models. Adjusting the counts using the Census Bureau's Population Estimates Program (PEP) Vintage 2018 population estimates is a logical step to improve location count accuracy but it will not completely eliminate error. The Vintage 2018 estimates were produced by combining the estimates of a number of intermediate inputs with adjustments based on the educated judgement of Census Bureau analysts. That the statistically derived population estimates for every county or county equivalent contain error is undeniable, but because of the steps required to be taken by the Census Bureau to account for the impact of hurricane Maria on Puerto Rico's population, the expected level of error is greater for population estimates of Puerto Rico's post-hurricane municipios. A review of the methodology used to produce the Vintage 2018 estimates by county or county equivalent and the extraordinary steps required to account for the effects of hurricane Maria plainly illustrates the municipio population estimates were produced through a combination of estimates and adjustments – each one subject to some degree

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1 *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 10-90, and 14-58, Draft Report and Order and Order on Reconsideration, ¶ 58 (rel. Sept. 5, 2019) ("Draft Order").
2 *Draft Order* ¶¶ 59-60.
3 *Draft Order* ¶¶ 59, 62-64 .
4 *Draft Order* ¶ 63.

of error.[5] These individual errors will compound, thus resulting in a relatively wide margin of error. The Commission's methodology to adjust location counts for the impacts of Hurricane Maria using Census Bureau updates is reasonable, but it must be recognized that using population estimates with a relatively wider margin of error to adjust CAM locations that are themselves not known to be 100% accurate will likely result in estimates containing a significant degree of error.

Because of the likelihood of significant error, the *pro rata* reduction in support should not apply unless the difference between the estimated and actual location counts exceeds some threshold. Specifically, PRTC recommends the Commission not apply a *pro rata* reduction in support unless the actual number of locations is less than 90% of the estimated total. For example, if the actual location count were 94% of the estimated number, there would be no *pro rata* reduction in support. Should the actual count be 89% of the estimated number, then there would be a 1% reduction in support. The use of 90% as the support reduction benchmark is consistent with the methodology used by the Census Bureau to calculate the margin of error for their population estimates. Indeed, all Puerto Rico Community Survey (PRCS) published margins of error are based on a 90 percent confidence level.[6]

In making this suggestion, PRTC is not claiming that the requirement to provide broadband at the required performance levels to a reduced number of locations would not also reduce the provisioning cost. Reducing the number of required locations will reduce cost although not in the linear fashion implied by a *pro rata* reduction in support. Tying reductions in support to the difference between estimated and actual location counts implies that the support budget was directly determined based on the cost of provisioning and operation broadband to all locations in a municipio. Since the budget was not directly determined based on cost, it follows that the amount of support should not be reduced because of cost reductions resulting from fewer locations.

**(2) <u>Weighting Matrix</u>** (Draft Order, ¶¶ 27-33)

<u>Proposal</u>: The Commission should increase the sliding scale in the network redundancy category from 20 to 40 points to better recognize the relationship between network resiliency and redundancy and their importance relative to the other overall scoring categories. Additionally, the Commission should account for the significant difference in the importance of backbone network route miles versus the miles associated with the last mile connection to the customer.

<u>Explanation</u>: The Draft Order adopts an additional component to the competitive application scoring regime. It adds points to a provider's score based on the levels of resiliency and redundancy in the proposed networks.[7] Resiliency is measured by the type of facilities used to

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[5] *See* Methodology For The United States Population Estimates: Vintage 2018, Nation, States, Counties, and Puerto Rico – April 1, 2010 to July 1, 2018, available at: https://www2.census.gov/programs-surveys/popest/technical-documentation/methodology/2010-2018/2018-natstcopr-meth.pdf (describing the input data, methodology, and processes for the creation of population estimates).

[6] *See* Puerto Rico Community Survey Multiyear Accuracy of the Data (5-year 2013-2017), at p. 9, available at: https://www2.census.gov/programs-surveys/acs/tech_docs/accuracy/MultiyearPRCSAccuracyofData2017.pdf? ("All PRCS published margins of error are based on a 90 percent confidence level.").

[7] *Draft Order* ¶ 28.

provide service. Aerial wireline, considered the least resilient, is assigned the most points (60), followed by fixed wireless and satellite (40), and buried fiber (0).[8] The Draft Order also sets forth a sliding scale up to 20 points to account for network and path redundancy. A network without any redundancy path diversity is assessed 20 points.[9] The level of points assessed declines as the percentage of network miles with redundancy increases.

The inclusion of resiliency and redundancy components into the scoring system is appropriate. However, PRTC has two issues with the mechanism set forth to assess points. First, the resiliency and redundancy components function independently of each other in the scoring system when they are, in fact, co-dependent. Although aerial wireline alone is less resilient than buried fiber alone, aerial wireline *combined* with a fixed wireless redundancy plan is likely more resilient – which the current point system does not recognize. Consider the following example:

- An all aerial wireline network with a fully deployed fixed wireless backup network would be assessed a total of 60 points (60 for the lack of resiliency plus 0 for redundancy). However, a 100% buried fiber network without any path or network redundancy would be assessed a total of 20 points (0 for resiliency plus 20 for lack of any redundancy).

In the example above, the scoring system in the Draft Order places *three times* the value of an all buried fiber network with no redundancy over an all aerial wireline network with 100% network and path diversity even though the redundancy of the aerial wireline/fixed wireless network would likely allow the return to near normal operations more quickly. While buried fiber is less likely than aerial wireline to be damaged and knocked out of service, Hurricane Maria knocked both out and the ability to provide a near immediate fixed wireless backup service would have been tremendously beneficial.

To address this issue, the Commission should increase the sliding scale of network redundancy from a maximum of 20 points to 40 points to better recognize the relationship between network resiliency and redundancy. In the prior example, increasing the maximum number of points assessed for a lack of redundancy to 40 would result in an assessment of 40 points for an all-buried fiber network with no redundancy application, and 60 points for the redundant aerial wireline and fixed wireless application. This result would increase the emphasis on redundancy while still maintaining the Commission's stated preference for buried fiber.[10]

By making the proposed adjustment, the total points in the Network Resilience and Redundancy Scoring matrix would increase from 80 to 100, and the Overall Scoring would increase from 270 to 290 (100 for price, 100 for Network Resilience and Redundancy, and 90 for Network

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8 *Draft Order* ¶ 30.

9 *Draft Order* ¶ 32.

10 The same comparison may be made between an aerial wireline network with a fixed wireless redundant network and a fixed wireless network alone with no redundancy. Under the system set forth in the Draft Order, the aerial wireline network with a fixed wireless redundant network would be assigned 60 points (60 for the lack of resiliency plus 0 for redundancy). The fixed wireless network with no redundancy would be assigned 60 points (40 for the lack of resiliency plus 20 for redundancy). This result implies the Commission has no preference between fixed wireless network with no redundancy and a network that has aerial wireline with fixed wireless backup. Increasing the redundancy assessment takes the importance of redundancy into account.

Performance). PRTC believes that in light of potential future natural disasters, network resilience and redundancy are as critical to consumers as price per location.

PRTC agrees that using network miles is an appropriate way to account for the fact that many applications are likely to contain more than just one type of network facility. Applicants are likely to propose networks that are made up of combinations of buried fiber, aerial wireline, fixed wireless and satellite. To account for the inclusion of both wireline and wireless technologies in a competitive application, it is appropriate to base the resiliency/redundancy scoring on the percentage of locations served by wireline and wireless.

PRTC further agrees that the proportion of network miles should be used to account for a mix of buried fiber and wireline aerial. However, the Commission should account for the significant difference in the roles played by backbone network route miles versus the miles associated with the last mile connection to the customer.

A single backbone route mile provides the transport functions serving many wireline customers and the backhaul function for just as many wireless customers. Last mile connections may serve only one location. The scoring system should be adjusted to reflect this difference. PRTC suggests the Commission weight the route miles by type – backbone (inter-office, feeder rings and direct connections to nodes, and the last mile connections to customers). This weighting may be based on bandwidth or could be based on levels established by the Commission. The following is an example of such a weighting regime:

a) Last mile may have a weight of 1 because of a maximum bandwidth assumption of 1 Gbps.
b) A ring connecting nodes may have a weight of 10.
c) The backbone routes connecting all central offices, cell sites and landing stations may have a weight of 100 reflecting capacities exceeding 100 Gbps.

**(3) <u>Elimination of Frozen Support to Fixed Providers</u>** (Draft Order, ¶¶ 86-90)

<u>Proposal</u>: The Commission should adopt a more flexible five-year phase-out of frozen support for fixed providers.

<u>Explanation</u>: The Draft Order states the Commission will phase down the fixed frozen support that Puerto Rico receives over 24 months. Specifically, for the first 12 months following authorization of a winning applicant, the carrier will receive 2/3 of its frozen support; in the second 12-month period, the carriers will receive 1/3 of its frozen support; thereafter, the carrier will only receive whatever, if anything, has been awarded through the competitive application process.[11] In refuting a claim by the Virgin Islands Telephone Corp. that the Commission has never reduced support to an ILEC without a transition mechanism of at least five years, the Commission replied in footnote 288 that, "In areas won in the CAF II auction by an entity other

[11] *Draft Order* ¶ 86.

than the price cap carrier, the price cap carrier will lose legacy support on the first day of the month after Phase II support is authorized for those census blocks."[12]

However, the example provided by the Commission ignores a critical difference. Contrary to the situation of the price cap carriers that declined the offer of model-based CAF Phase II, carriers in Puerto Rico were ravaged by two back-to-back hurricanes that caused unprecedented destruction to their telecommunications infrastructure. Even with the Commission's critical support for restoration, PRTC's expenditures associated with service restoration and revenue losses have been unparalleled, a situation that only exacerbated the unique challenges of providing service in Puerto Rico such as higher shipping costs, higher operational costs due to topography and climate, heightened risk of severe weather, and low average income.

Additionally, the Commission addressed the phase-down of CAF Phase I frozen support in states where the price cap carriers had in 2015 declined the offer of model-based CAF Phase II support, a situation not present in Puerto Rico.[13] These carriers had until the CAF Phase II Auction results were implemented this year (2019) to adjust to the loss of support. Given these factors, the Commission should adopt a more flexible five-year phase-down such as the one it adopted to transition prior existing support for competitive ETCs to the then-new CAF program or, at a minimum, the four-year phase-down it adopted for ETCs electing model-based CAF II support in states in which that support was less than Phase I support.[14]

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PRTC takes this opportunity to commend the Commission for the work in the Draft Order and, in particular, for the following the two decisions:

a) Adoption of Municipios as the Geographic Area for Awarding Support.[15] Using municipios will allow for economies of scale that make serving the historically unserved areas of a municipio more economical. Additionally, municipios are well-defined and known to local populations and authorities.

b) Deployment Obligation.[16] Requiring each winning participant to deploy service by the specified deadline to all locations within the municipios for which it is the winning applicant is consistent with the Commission's goal of ensuring resilient service to all parts of Puerto Rico and the decision to make all locations eligible for support.

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12 *Draft Order* ¶ 86, n.288.

13 *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, FCC 19-8, ¶ 9 (Feb. 15, 2019) (stating that "In this Report and Order, we address only the phase-down of CAF Phase I frozen support in states where the price cap carriers declined the offer of model-based CAF Phase II support.").

14 *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 519 (2011); 47 C.F.R. § 54.307(e) (providing for baseline support in the first year, 80% in the second year, 60% in the third year, 40% in the fourth year, and 20% in the fifth year); *Draft Order* ¶ 86, n.288 (citing 47 C.F.R. § 54.310(f)).

15 *Draft Order* ¶ 51.

16 *Draft Order* ¶ 58.